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UTAH SALES AND USE TAX



ORIGINS

- ✖ Depression – 1930's
- ✖ Property Tax Declines
- ✖ Temporary Sales Tax
- ✖ Very low rate
- ✖ Very broad base
- ✖ Use Tax followed several years later

ADMINISTRATION

- ✖ Utah State Tax Commission created in early 1930's
- ✖ Double as the State Board of Equalization
- ✖ Replaced a second agency that administered other taxes

HISTORY OF SALES & USE TAX

SALES TAX

- ✗ Tax on the transaction, not the product or service
- ✗ Purchaser is the taxpayer
- ✗ Seller has collection responsibility
- ✗ Applied to the sale of TPP and some services
- ✗ Generally follows form over substance
- ✗ 100% penalty to those who don't collect
- ✗ Trust Fund Tax

USE TAX

- ✗ Applies where sales tax was due but not charged
- ✗ Purchaser responsibly to report and remit
 - + Withdrawal of items from inventories
 - + Purchase goods and some services tax free
- ✗ Applies to TTP that is stored, used, or consumed in the state if sales tax is not collected by the seller.
 - + Advertising
 - + Supplies
 - + Equipment, Office and shop
 - + Computer hardware and software
 - + Internet/Mail Order purchases

OTHER REQUIREMENTS

- ✗ Seller must have a sales tax license
- ✗ Nexus – (later course on multistate tax)
 - + Company without nexus not required to collect tax
 - + If they choose to collect for the state, rate is 5.9% for all items but food. Food is at 3%.
- ✗ Must report sales by location with different rates
- ✗ Must file a return even if no sales

SOURCING

- ✖ Fixed place of business – where the sale occurs
- ✖ Non fixed place of business – where sale occurs
- ✖ Out of state seller w/nexus – where delivered
- ✖ Out of state seller w/o nexus – where delivered
- ✖ Rate changes posted for 60 days
- ✖ Boundary changes only at beginning of quarter
- ✖ Rates and boundary's are posted on the Tax Commission web site

OTHER TRANSACTION TAXES

- ✖ Tourism Tax
 - + 1% on prepared food
 - + 7% on rental of motor vehicles
- ✖ Motor Vehicle Rentals – 2.5% statewide
- ✖ Transit room tax
 - + County wide option of 4.25%
 - + Municipal option of 1.5%
- ✖ Waste Tire Recycling Fee - \$1 per tire

OTHER TRANSACTIONAL TAXES CON'T

- ✕ • Motor fuel, aviation fuel, and special fuel taxes
- ✕ • Lubricating oil fee
- ✕ • Beer, cigarette and tobacco products taxes
- ✕ • Municipal energy sales and use tax
- ✕ • Emergency services telephone charge
- ✕ • Royalty payment on unprocessed brine shrimp
- ✕ • Multi-channel audio and video tax
- ✕ • Sexually explicit business and escort service tax
- ✕ • Municipal telecommunications license tax

EXEMPTIONS

- ✖ Taxable , non-taxable or exempt
- ✖ Exemptions are legislatively based and narrowed defined
 - + Entity Based
 - + Use Based
 - + Product Based
- ✖ Exemption Certificate required
- ✖ Reporting required – on selected exemptions

ENTITY BASED

- ✖ Sales to a public transit district
- ✖ Sales to US and Utah government agencies
- ✖ Sales made to or by aging agencies, etc.
- ✖ Enrolled members of Native American tribes
- ✖ Foreign diplomats
- ✖ Commercial Agricultural - Inputs
- ✖ Sales of electricity and fuel for industrial use
- ✖ Sale or lease of semiconductor – Inputs
- ✖ Sales to religious or charitable institutions
- ✖ Sales of construction materials to 501(c)(3)
- ✖ More.....

USE BASED

- ✗ Vehicles for exclusive use outside of Utah
- ✗ Ingredient or component part
- ✗ Resale or re-lease
- ✗ Where tax was paid in another State
- ✗ Replacement parts – 3 year life – 2000-3999
- ✗ Replacement parts – 3 year life – mining
- ✗ Sales of nonreturnable containers
- ✗ Charges for labor to repair exempt property
- ✗ Property brought into state after first use
- ✗ More....

PRODUCT BASED

- ✗ Isolated or occasional sales – Bulk sales
- ✗ Drugs - legal
- ✗ Sales or rentals of durable medical equipment
- ✗ A prosthetic device
- ✗ Sales of disposable home medical equipment
- ✗ Sales of hearing aids and accessories
- ✗ Admissions to higher education athletic events
- ✗ Sales of food by 501(c)(3) not to public
- ✗ More....

CALCULATING THE BASE

- ✗ Purchase price and sales price include
 - + Total consideration ... sold, leased, or rented.
 - + The seller's cost
 - + Expenses of the seller; e.g. materials, labor, interest
 - + Transportation to the seller
 - + Tax (including excise tax) imposed on the seller;
 - + a charge by the seller ... necessary to complete
- ✗ Purchase price does not include:
 - + Delivery charge;
 - + Installation charge;
 - + Discount taken by a purchaser

TANGIBLE ATTACHED TO REAL

- ✗ The attachment is essential to use, and
- ✗ The will remain attached over its useful life.
- ✗ Essential to the operation
- ✗ Detachment would cause substantial damage, or
- ✗ Detachment would require substantial alteration or repair

TPP CONVERTED TO REAL PROPERTY

- ✗ Sale of real property is not subject to tax
- ✗ Person who converts TPP to Real Property pays the tax
- ✗ Examples:
 - + Fabricators
 - + Contractors
 - + Sell and install – Cabinets, carpet, flooring
- ✗ Taxable base is cost of TPP:
 - + If the installer is the manufacturer:
 - ✗ Labor to manufacture is exempt
 - ✗ If manufacture is in the right SIC code – Equipment exempt
 - ★ May have business with split SIC codes

TAXABLE TRANSACTIONS

- ✖ Retail sales or purchases of TPP
- ✖ TPP stored, used, or consumed in Utah.
- ✖ Rentals and leases of TTP – Located or took possession in the state
- ✖ Labor to repair, renovate, wash and clean TPP
 - + This includes maintenance agreements.
- ✖ Labor to attach TTP to other TTP
 - + (Labor to attach TTP to RP is not subject to tax if separately stated)

TAXABLE TRANSACTIONS CON'T

- ✖ Laundry and dry cleaning services when the labor is not performed by the purchaser
- ✖ Admission to a place of amusement
- ✖ User fees include for video game, television ... not in home
- ✖ Use of assisted amusement devices when the device is not operated by the purchaser
- ✖ Assisted cleaning or washing of TTP if the labor is not performed by the purchaser
- ✖ Tourist home, hotel, motel, campground accommodations less than 30 consecutive days
- ✖ Telegraph services and in-state telephone service
- ✖ Meals at restaurants or other eating places
- ✖ Sales for commercial use of gas, electricity, heat, coal, fuel oil, or other fuels.
- ✖ Sales for residential use of gas, electricity, heat, coal, fuel oil, or other fuels are taxed at the state rate of 2 percent
 - + plus any applicable local and/or public transit tax.
- ✖ Sales of grocery food are taxed statewide at the rate of 3 percent.
 - + Sales of prepared food are taxed at the full combined rate.
- ✖ Sales of prepaid telephone calling cards, including vending machine sales of prepaid telephone calling cards.
- ✖ Memberships that entitle the purchaser to discounted or free merchandise or services

FILING AND REPORTING

- ✖ Commission determines the filing frequency:
 - + \$0 to \$999 per year – annually
 - + \$1,000 to \$49,999 per year – quarterly
 - + \$50,000 and greater - monthly
- ✖ Will notify if filing frequency changes
- ✖ Only one return per filing period
- ✖ Separate forms for specialty taxes
 - + e.g. transient room, tourism, waste tire
- ✖ Paper v. Online filing
- ✖ Penalty for not using correct forms – TC-62 series
- ✖ Sellers Discount – Monthly filers – 1.31%

PAYMENT

- ✖ Send check with return – annual and qtly
- ✖ paymentexpress.utah.gov – annual & qtly
- ✖ Electronic Funds Transfer (EFT) - Required
 - + Annual tax of \$96,000 or more
 - + Can schedule 30 days in advance
 - + Can come out of account on date you select
 - + Payment must be complete by 7:00 p.m. MST
 - + EFT account must be set up prior by calling TC

PENALTIES

- ✖ Failure to file a tax due return by the due date:
 - + Greater of \$20 or up to 10 percent of the unpaid tax
- ✖ Failure-to-pay:
 - + The greater of \$20 or up to 10 percent of the tax balance
 - ✖ If the tax balance remains unpaid 90 days after the due date.
- ✖ Failure to pay the full amount of tax due, or within 30 days of a notice of deficiency:
 - + The greater of \$20 or up to 10 percent of the tax due
 - + Unpaid tax includes tax remitted w/out a tax return
- ✖ Monthly filers – file or pay late:
 - + Loose seller discount
 - + Penalty at graduated rate, time period of the delinquency
- ✖ Manufacturing Exemption reporting:
 - + \$1,000 or 10% of the sales tax had the exemption not applied

INTEREST

- ✖ Interest will be assessed from the original due date until the tax liability is paid in full
- ✖ Rate is the IRS rate, updated quarterly

OVERPAYMENTS AND REFUNDS

- ✗ File claim within three years of paying the tax
- ✗ If claim denied:
 - + May file a petition for agency action.
 - + Prohibited from filing claim on deficiency that has been adjudicated.
- ✗ Three methods:
 - + Take an adjustment on the current sales tax return;
 - + File an amended sales tax return for the period in question; or
 - + Mail a refund request letter to the Tax Commission
- ✗ Must include :
 - + the legal basis for a refund
 - + Supporting documents such as copies of invoices
 - + Additional verification may be requested

RECORD KEEPING

- ✗ Every retailer, lessor or person doing business in Utah is required to keep complete records used to determine the amount of sales and use tax for which they are liable.
- ✗ Records must:
 - + Be retained for three years from the filing date
 - + Must be available in their original format (paper or electronic).
- ✗ These records should:
 - + Show taxable and non-taxable gross receipts
 - + Show deductions and exemptions allowed by law and claimed
 - + Show bills, invoices, or similar evidence of all TPP purchased
 - + Include original supporting documents (e.g. bills, receipts, invoices and cash register tapes) and all schedules or working papers used in the preparation of tax returns.

AUDIT

- ✘ Commission has active audit program
- ✘ Audit selection based on:
 - + Size of company and amount of tax
 - + Referrals from other audits and citizens
 - + Random samples
 - + Targeted industries
- ✘ Will look at sales and purchases
 - + Exemption Certificates
 - + Goods consumed by company/Equipment
- ✘ Use of sampling – Extrapolation